

Shainis & Peltzman, Chartered

Counselors at Law

Suite 290
1901 I Street, N.W.
Washington, D.C. 20036

(202) 293-0011
Fax (202) 293-0810

Aaron H. Shainis
Lee J. Peltzman

DOCKET FILE COPY ORIGINAL

Of Counsel
William H. BuRoss, III
Ruth S. Baker-Battist
Robert J. Keller

February 7, 2000

Ms. Magalie Salas
Secretary
Federal Communications Commission
Portals II - 12th Street Lobby
Filing Counter - **TW-A325**
445 - 12th Street, S.W.
Washington, DC 20554

RECEIVED

FEB - 7 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

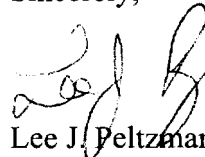
Re: MM Docket No. 88-577
Biltmore Forest, North Carolina
Motion to Dismiss

Dear Ms. Salas:

Transmitted herewith, on behalf of Orion Communications Limited, is an original and fourteen (14) copies of its Motion to Dismiss in the above-referenced Commission proceeding.

Please contact the undersigned in the event the Commission has any questions with respect to the filing of this Motion to Dismiss.

Sincerely,



Lee J. Peltzman
Counsel for
ORION COMMUNICATIONS LIMITED

Enclosure

cc: Stephen Leckar, Esq. (w/encl.)

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
FEB - 7 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE CLERK

In re Applications of)	MM Docket No. 88-577
)	
LIBERTY PRODUCTIONS,)	File No. BPH-870831MI
A LIMITED PARTNERSHIP)	
)	
WILLSYR COMMUNICATIONS)	File No. BPH-870831MJ
LIMITED PARTNERSHIP)	
)	
BILTMORE FOREST)	File No. BPH-870831MK
BROADCASTING FM, INC.)	
)	
SKYLAND BROADCASTING)	File No. BPH-870831ML
COMPANY)	
)	
ORION COMMUNICATIONS)	File No. BPH-870901ME
LIMITED)	
)	
For a Construction Permit for a New)	
FM Broadcast Station on Channel 243A)	
at Biltmore Forest, North Carolina)	

To: The Commission

MOTION TO DISMISS

Orion Communications Limited ("Orion"), by its attorney, hereby moves to dismiss the three different Replies filed by Liberty Productions, a Limited Partnership ("Liberty") to the Opposition to Supplemental Brief filed by Biltmore Forest Broadcasting FM, Inc. ("BFB"), and the Responses to Supplemental Briefs filed by Willsyr Communications Limited Partnership ("Willsyr") and Orion. In support of its position, Orion submits the following:

On November 23, 1999, the Commission, by its Office of General Counsel, released an Order, FCC 99I-23, directing the parties to this proceeding to file pleadings on the false

certification issue previously designated against Liberty. Liberty was provided the opportunity to file a supplemental pleading not exceeding twenty-five (25) pages in length addressing its basic qualifications. Oppositions not exceeding twenty-five (25) pages in length were permitted to be filed by the other applicants. Liberty was then permitted to “file a reply not exceeding ten (10) pages in length within ten (10) days thereafter.” Order at p. 4.

Liberty filed a Supplemental Brief and Willsyr, BFB and Orion each filed an Opposition or Response to Liberty’s Supplemental Brief. On January 21, 2000, Liberty filed separate Replies to Willsyr’s, BFB’s and Orion’s Oppositions. Liberty’s Replies, when combined, are twenty-six (26) pages in length.

Liberty’s Replies should be dismissed. Clearly, under the Commission’s rules and custom and the specific language of the Commission November 23, 1999 Order, Liberty was to file a single Reply to Oppositions filed against its Supplemental Brief. The language from the Commission Order specifically stated directed Liberty to file “a reply not exceeding ten (10) pages in length.” Applicants in Commission hearings, including the Biltmore Forest case, file one set of Reply Findings rather than separate Replies responding file to each applicants’ Proposed Findings and Conclusions. Similarly, the parties filed a single set of Reply Exceptions. The parties also each submitted a single Opposition to the other applicants’ Applications for Review filed in this case.¹

Liberty’s effort to evade the specific language contained in the Commission November 23, 1999 Order by filing three separate Replies should not be countenanced. The proper remedy is to dismiss Liberty’s opportunistic effort. In the event the Commission feels that such an action

¹ See e.g., Orion Opposition to Application for Review, filed May 23, 1991.

would be too harsh, then Liberty should be directed to refile a single Reply in conformity with the Commission's November 23, 1999 directive that it file "a reply not exceeding ten (10) pages in length."

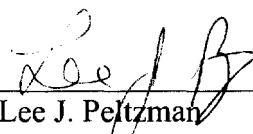
Accordingly, in view of the above, Orion respectfully urges the Commission to dismiss Liberty's multiple Replies as inconsistent with the Commission November 23, 1999 Order in this proceeding.²

Respectfully submitted,

ORION COMMUNICATIONS LIMITED

Shainis & Peltzman, Chartered
1901 L Street, NW - Suite 290
Washington, D.C. 20036
202 293 0011

By:



Lee J. Peltzman
Its Attorney

February 7, 2000

² Orion does not object to Liberty's January 21, 2000 Motion for Extension of Time. Unlike Liberty's effort at gamesmanship by writing three (3) different Replies when a single ten-page Reply was required, Liberty had good cause for seeking an extension of time to file its Reply one (1) day late.

CERTIFICATE OF SERVICE

I, Michael S. Goldstein, secretary in the law offices of Shainis & Peltzman, Chartered, do hereby certify that on this 7th day of February, 2000, copies of the foregoing were sent (except where noted) via first-class United States Mail, postage pre-paid, to the following persons:

Timothy K. Brady, Esq.
Law Offices of Timothy K. Brady
P. O. Box 71309
Newman, GA 30271-1309

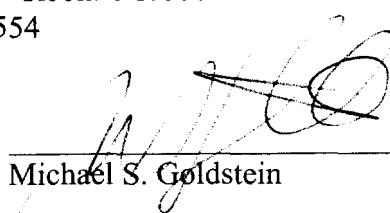
Stephen Yelverton, Esq.
c/o Ludwig & Robinson
Suite 500 North
601 - 13th Street, N.W.
Washington, D.C. 20005

Donald J. Evans, Esq.
Donelan, Cleary, Wood & Maser
1100 New York Avenue, N.W.
Washington, D.C. 20005

Robert DePont, Esq.
140 South Street
P. O. Box 386
Annapolis, MD 21404

John Riffer, Esq.*
Associate General Counsel
Federal Communications Commission
445 12th Street, S.W. - Room 8-A660
Washington, D.C. 20554

James Shook, Esq.*
Enforcement Bureau
Hearings Division
Federal Communications Commission
445 12th Street, S.W. - Room 8-A660
Washington, D.C. 20554



Michael S. Goldstein

*Via Hand Delivery